DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0273
Sales Tax
For the Year 2004

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ISSUE

I. Sales and Use Tax – Imposition – Sale of Vehicle to Out-Of-State Customers.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-15 (repealed 2004, P.L. 81-2004, Sec. 60.); 45 IAC 2.2-2-2; 45 IAC 2.2-3-5; 45 IAC 15-11-2; 45 IAC 15-3-2.

Taxpayer protests the imposition of sales tax on the sale of vehicles to out-of-state customers because, it argues, it: was not notified of the change in law; had no knowledge of the new law; relied on representations made by a Department employee; and, it argues, because paying the sales tax amounts to double-taxation.

STATEMENT OF FACTS

Taxpayer is a used car dealership operating two business locations in Indiana. After an audit for the years 2004, 2005 and 2006, the Indiana Department of Revenue (Department) determined that Taxpayer failed to collect sales tax on vehicles sold to out-of-state customers in July 2004. These out-of-state customers took possession of the vehicles within Indiana then purportedly transported them to Ohio. The Department assessed additional sales tax and interest, but waived the associated negligence penalty. Taxpayer protested the assessment and a hearing date was scheduled. Taxpayer did not appear at the hearing. This Letter of Findings is based on the best information available to the Department. Additional facts will be supplied as needed.

I. Sales and Use Tax – Imposition - Sale of Vehicle to Out-Of-State Customers.

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The tax is imposed on the purchaser of the property. The retail merchant collects the tax and holds it in trust until it is remitted to the state. IC § 6-2.5-2-1(b).

There used to be a sales tax exemption for sales of vehicles that were immediately transported outside Indiana and titled or registered in another state. Effective July 1, 2004, the Indiana legislature repealed that exemption. IC § 6-2.5.5.15 (Repealed, P.L. 81-2004, Sec. 60.). Indiana

sales tax applies to all motor vehicles, trailers, watercraft, or aircraft purchased in Indiana. 45 IAC 2.2-2-2.

45 IAC 2.2-3-5(c) states that, "If [a] vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to him; or if the purchaser claims exemption and no tax is collected by the dealer, the certificate at the bottom of the ST-108 must be completed and signed by the purchaser."

45 IAC 2.2-3-5(f) states that, "Exemptions from the sales tax will not be allowed except for the reasons listed on the reverse side of the revised form ST-108." (This is now ST-108E).

45 IAC 2.2-3-5(g) states that, "The dealer or license branch must collect sales tax in the usual manner from any purchaser claiming exemption from the sales tax for a reason other than those shown on the ST-108. The purchaser may apply for a refund of this tax from the Indiana Department of Revenue, Sales Tax Division."

Taxpayer, therefore, had a legal obligation to collect and remit the sales tax due from the Ohio purchasers on the sales of the vehicles since the sales were not specifically exempted.

Taxpayer argues that when these vehicles were sold to the Ohio purchasers, Taxpayer did not know the law had changed to now require the collection of sales tax on the purchase of vehicles to be taken out of state. Furthermore, the Taxpayer argues, it had not been notified of the change by the Department.

The Department is unable to agree that an Indiana taxpayer cannot be held responsible for collecting sales tax on the ground that it was unaware of its requirement to comply with the law, even though it had only recently come into effect. As explained in 45 IAC 15-11-2(b), "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence." The state holds Taxpayer to the same requirement that it does any other Indiana individual or business; Taxpayer is required to understand its responsibility or to accept the fact that it may incur liability for failure to do so. Also, while the Department publicizes changes in the law, it is under no legal obligation to notify every individual taxpayer who may be affected by the change in law. The Department, nonetheless, equitably waived the penalty due on the unpaid sales tax.

Taxpayer further states that a Department employee acknowledged to it that quite a few Indiana dealers were not aware of this change and assured it the taxes would not be owed.

45 IAC 15-3-2(e) states:

> Oral opinions or advice will not be binding upon the department. However, taxpayers may inquire as to whether or not the department will make a ruling or determination based on the facts presented by the taxpayer. If the taxpayer wishes a ruling by the department, the formal request must be in writing. A taxpayer may also orally receive technical assistance from the department in preparation of returns. However this advice is advisory only and is not binding in the latter examination of returns.
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> Based upon general inquiries and correspondence, the department often issues written letters of advice. Such letters are advisory in nature only and merely technical assistance

> tools for the taxpayer. Strictly informational type letters are not to be considered rulings by the department and will not be binding.
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> However, some written inquiries have asked for the tax consequences of a particular transaction, based upon the facts presented. In such instances, the department may consider such letters as rulings that may bind the department to the position stated in respect to that taxpayer only. All such rulings issued will be binding provided that all of the facts described in obtaining the ruling are true and accurate. Any misstatement of material fact or information will void the ruling.

The plain language of the rule clearly states that oral opinions will not be binding on the Department. Even when a taxpayer orally receives technical assistance from the Department, the advice is advisory only and is not binding on further examination of returns, such as the audit in this case.

Lastly, Taxpayer argues it never collected the taxes from its Ohio purchasers because it was their responsibility to pay the tax in the Ohio when they titled their cars. Taxpayer argues the Department's assessment of sales taxes against it now amounts to double taxation.

Taxpayer is mistaken. Taxpayer cannot be double-taxed on these transactions. Taxpayer never remitted any sales tax on the transactions in question, so Taxpayer cannot, by definition, be double-taxed.

Neither would the transaction have been double-taxed had Taxpayer properly fulfilled his legal obligation to collect the sales tax. There is no question the Department is owed sales tax on these retail transactions that took place in Indiana. The fact that Taxpayer's Ohio customers may have paid use tax in Ohio is irrelevant to Indiana's interests. At the time the sales in question were made, Indiana required sales tax to be collected on all retail sales that were not exempted. Effective July 1, 2004, there was no exemption on Indiana sales of vehicles to customers immediately transporting and then titling vehicles out of state. Taxpayer was legally obligated to collect the sales tax on these transactions. Had Taxpayer done so, Taxpayer would have been expected to provide its Ohio customers with the required paperwork documenting that sales tax was paid on the transactions. These Ohio customers would then have been credited for the Indiana sales tax by Ohio, and they would have been able to deduct the amounts from their taxes due in Ohio.

Whether or not Taxpayer seeks recourse from its Ohio purchasers, it is clear Taxpayer had a legal duty to collect sales tax on the non-exempt retail transactions in question, and to remit those taxes to the Department.

FINDING

Taxpayer's protest is respectfully denied.